

AMENDED IN ASSEMBLY JUNE 22, 2000

AMENDED IN ASSEMBLY JUNE 15, 2000

AMENDED IN SENATE MAY 18, 2000

AMENDED IN SENATE MAY 3, 2000

AMENDED IN SENATE MARCH 23, 2000

SENATE BILL

No. 1599

Introduced by Senator Bowen

February 18, 2000

An act to amend Section 637.5 of the Penal Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1599, as amended, Bowen. Privacy: video providers.

Existing law prohibits, with prescribed exceptions, a person who owns, controls, operates, or manages a cable television corporation or leases channels on a cable system from using electronic devices to observe, listen to, record, or monitor events or conversations inside a subscriber's residence, workplace, or place of business without the subscriber's written consent. Existing law also prohibits that person from providing any other person with individually identifiable information, as specified, regarding any subscriber.

This bill would *instead* make the above provisions applicable to a video provider, which it would define as a person, company, or service that provides video programming services to a residence, ~~as defined~~, for a fee, ~~as~~

~~specified~~ *paid by the subscriber to the video provider.* The bill also would specify persons or entities that are not considered video providers. Since a violation of these provisions is, among other things, a crime, the bill would impose a state-mandated local program by expanding the definition of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 637.5 of the Penal Code is
2 amended to read:

3 637.5. (a) No person who owns, controls, operates, or
4 manages a video provider, or who leases channels from a
5 video provider shall *in the course of providing video*
6 *provider services*:

7 (1) Use any electronic device to record, transmit, or
8 observe any events or listen to, record, or monitor any
9 conversations which take place inside a subscriber's
10 residence, workplace, or place of business, without
11 obtaining the express written or electronic consent of the
12 subscriber. A video provider may conduct electronic
13 sweeps of subscriber households to monitor for signal
14 quality.

15 (2) Provide any person with any individually
16 identifiable information regarding any of its subscribers,
17 ~~collected in the course of providing video provider~~
18 ~~services~~, including, but not limited to, the subscriber's
19 television viewing habits, shopping choices, interests,
20 opinions, energy uses, medical information, banking data
21 or information, or any other personal or private
22 information, without the subscriber's express written or
23 electronic consent.



1 (b) Individual subscriber viewing responses or other
2 individually identifiable information derived from *its*
3 subscribers may be retained and used by a video provider
4 only to the extent reasonably necessary for billing
5 purposes and internal business practices,~~—and to provide~~
6 *services requested by the subscriber, or* to monitor for
7 unauthorized reception of services. A video provider may
8 compile, maintain, and distribute a list containing the
9 names and addresses of its subscribers if the list contains
10 no individually identifiable information other than the
11 subscriber's name and address, and if subscribers are
12 afforded the right to elect not to be included on those lists.
13 A video provider shall maintain adequate safeguards to
14 ensure the physical security and confidentiality of any
15 subscriber information that is in their possession, custody,
16 or control.

17 (c) A video provider shall not make individual
18 subscriber information available to government agencies
19 without the subscriber's consent in the absence of legal
20 compulsion, including, but not limited to, a court order ~~or~~
21 ~~subpoena. Prior to responding to that legal request, the~~
22 ~~video provider shall notify the subscriber of the nature of~~
23 ~~the request and the governmental agency that has~~
24 ~~requested the information, unless otherwise prohibited~~
25 ~~by law from doing so. warrant, or subpoena. If requests~~
26 ~~for this information are made, a video provider shall~~
27 ~~promptly notify the subscriber of the nature of the~~
28 ~~request and what government agency has requested the~~
29 ~~information prior to responding, unless otherwise~~
30 ~~prohibited from doing so by law.~~

31 Nothing in this section shall be construed to prevent
32 local franchising authorities from obtaining information
33 necessary to monitor franchise compliance pursuant to
34 franchise or license agreements. However, this
35 information shall be provided so as to omit individually
36 identifiable subscriber information. Information
37 obtained by local franchising authorities shall be used
38 solely for monitoring franchise compliance and shall not
39 be subject to the California Public Records Act (Chapter

1 3.5 (commencing with Section 6250) of Division 7 of Title
2 1 of the Government Code).

3 (d) Any individually identifiable subscriber
4 information gathered by a video provider shall be made
5 available for subscriber examination within 30 days of
6 receiving a request by a subscriber to examine the
7 information on the premises of the corporation or
8 through another reasonable mechanism. Upon a
9 reasonable showing by the subscriber that the
10 information is inaccurate, a video provider shall correct
11 the information within 30 days and shall send written or
12 electronic confirmation to the subscriber.

13 (e) Upon a subscriber's application for video provider
14 service, including, but not limited to, interactive service,
15 a video provider shall provide the applicant with a
16 separate notice in an appropriate form explaining the
17 subscriber's right to privacy protection afforded by this
18 section.

19 (f) As used in this section:

20 (1) "Video provider" means any person, company, or
21 service that provides ~~one or more channels of~~ video
22 programming to a residence, including a home,
23 condominium, apartment, or mobilehome, where a fee is
24 paid specifically for that service by the subscriber *to the*
25 *video provider*, whether directly or included in dues or
26 rental charges, regardless of the method used to deliver
27 the video programming. A "video provider" shall
28 include, but not be limited to, a provider of cable
29 television, master antenna television, satellite master
30 antenna television, direct broadcast satellite, multipoint
31 distribution service, and any other method of providing
32 video programming regardless of the technology used. A
33 video provider shall not include an Internet service
34 provider unless that Internet service provider is directly
35 providing video provider services. A video provider shall
36 not include a person, company, or service that provides
37 other services and where any video content provided is
38 merely ancillary to the primary services, such as a video
39 tutorial on how to use a product or service, or a video
40 promotional piece.

(2) “Individually identifiable information” means any information identifying a subscriber or his or her use of any service provided by a video provider, other than the fact that the individual is a subscriber. “Individually identifiable information” shall not include anonymous, aggregate, or any other information that does not identify an individual subscriber of a video provider service.

(3) “Person” means an individual, business, association, partnership, corporation, limited liability company, or other legal entity, or an individual acting or purporting to act for or on behalf of any government, or subdivision thereof, whether federal, state, or local.

(4) “Interactive service” means any service offered by a video provider involving the collection, reception, aggregation, storage, or use of electronic information transmitted from a subscriber to any other receiving point under the control of the video provider, or vice versa.

(5) “Subscriber” means an individual who purchases and receives video provider services.

(g) Nothing in this section shall be construed to limit the ability of a video provider to market video provider services or ancillary services to its subscribers.

(h) Any person receiving subscriber information from a video provider shall be subject to the provisions of this section.

(i) Any aggrieved person may commence a civil action for damages or injunctive relief for invasion of privacy against any video provider, service provider, or person that leases a channel or channels from a video provider that violates the provisions of this section.

(j) Any person who violates the provisions of this section is guilty of a misdemeanor punishable by a fine not exceeding three thousand dollars (\$3,000), or by imprisonment in the county jail not exceeding one year, or by both a fine and imprisonment.

(k) The penalties and remedies provided by subdivisions (i) and (j) are cumulative, and shall not be construed as restricting any penalty or remedy, provisional or otherwise, provided by law for the benefit

1 of any person, and no judgment under this section shall
2 preclude any person from obtaining additional relief
3 based upon the same facts.

4 (I) The provisions of this section are intended to set
5 forth minimum state standards for protecting the privacy
6 of subscribers to cable television services and are not
7 intended to preempt more restrictive local standards.

8 SEC. 2. No reimbursement is required by this act
9 pursuant to Section 6 of Article XIII B of the California
10 Constitution because the only costs that may be incurred
11 by a local agency or school district will be incurred
12 because this act creates a new crime or infraction,
13 eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section
15 17556 of the Government Code, or changes the definition
16 of a crime within the meaning of Section 6 of Article
17 XIII B of the California Constitution.

